IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 27764 of 2007(E)

PETITIONER:

THOTTUVAL ABDUL SAMAD ABDUL NAZIR,
AL-ABRAR HOUSE, DESHABHIMANI ROAD,
KALOOR P.O., ERNAKULAM.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS:
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1. THE REGIONAL PASSPORT OFFICER,
KOCHI.

2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, HOME DEPARTMENT, TRIVANDRUM,
REPRESENTED BY THE DIRECTOR OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

ADV. SRI. P.G. THAMPI – DIRECTOR GENERAL OF PROSECUTION
BY ADV. SRI. P.PARAMESWARAN NAIR - ASST. SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ANTONY DOMINIC,J.

W.P (C) No. 27764 of 2007

Dated this the 20th day of September, 2007

J U D G M E N T

Petitioner submitted Exhibit-P4 application for a passport. It is stated in the writ petition that he has received an invitation from the UAE for a lecture at the Dubai International Holy Quran Award function which is to commence on the 28th of this month. It is stated that if there is delay in issuing passport pursuant to Exhibit-P4 he will not be able to travel abroad and attend the function.

2. On the other hand, the 1st respondent has filed a statement that on receipt of Exhibit-P4 application from the petitioner the same has been forwarded to the City Police Commissioner, Kochi for his report. It is also stated that even going by the application submitted by the petitioner, 23 criminal cases are pending against him in Kerala. Therefore, the passport authority would contend that in terms of Section 6 (2) (f) of the Act, he is not in a position to favourably consider his application.

3. The Director General of Prosecutions, who entered appearance on behalf of 2nd respondent submits that the petitioner was under detention for a long number of years and it

was therefore that these cases remained pending. He would submit that in the peculiar circumstances of the case State has no objection to granting the request of the petitioner.

4. Section 6 (2) (f) of the Passport Act, 1967 says that in a case like this passport cannot be issued. Thereupon, the counsel for the petitioner made a reference to a judgment of the Bombay High Court in Shyam Dwarakadas Chabria Vs. Regional Passport Officer and Another [2000 CRL.L.J. 2942]. In para 7 of the said judgment, the court has made reference to notification dated 25th August, 1993 issued by the Government of India, whereby an earlier notification dated 16.9.1979 was substituted. The said notification grants exemption to the citizens against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce order from the courts concerned permitting them to depart from India, from the operation of the provisions of Section 6 (2) (f) of the Passport Act, 1967, subject to the conditions mentioned therein. The counsel contends that the exemption provided in the said notification will be applicable, in case if the petitioner is able to

produce orders from the courts concerned.

5. Taking note of the submissions made by the counsel on either side I am inclined to dispose of this writ petition directing that if the petitioner produces orders from the criminal courts, where the cases are pending against him passed on the basis of any notification granting exemption from Section 6 (2) (f) of the Act, such orders will be taken note of by the 1st respondent. On the basis of such orders, necessary orders on Exhibit-P4 will be passed by the 1st respondent, without delay. While considering Exhibit-P4, the 1st respondent need not await for the report from the City Commissioner of Police, Kochi for the reason that the State has no objection in favourably considering the application submitted by the petitioner in the peculiar circumstances of the case.

Once the petitioner produces the orders from the Criminal Courts, where the criminal cases are pending, within two days thereafter orders will be passed on Exhibit-P4.

The writ petition is disposed of as above.

(ANTONY DOMINIC, JUDGE).

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(ANTONY DOMINIC, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007